



Reporting and Withholding on Payments to Foreign Persons (A Broader Perspective)

Tax **FORUM** 2009
IRS Nationwide

Types of Chapter 3 Withholding

- 1441 - Withholding of Tax on NRA
- 1442 – Withholding of Tax on Foreign Corporations
- 1443 – Withholding of Tax on Foreign Tax Exempts
- 1444 – Withholding of Tax on Vir. Island Source Income
- 1445 – Withholding of Tax on Disposition of USRPI
- 1446 – Withholding of Tax on ECI Allocable to Foreign Partners



Required Documentation

- W 8BEN- Beneficial Owner status and treaty claim
- W 8ECI -Beneficial Owner status and withholding exemption
- W 8EXP- Beneficial Owner status and withholding exemption
- Form W-8IMY – Non Beneficial Owner Status



Withholding of Tax on NRAs and Foreign Corps-1441/1442

Income Must Be:

- US sourced per sourcing rules
- Fixed or determinable, annual or periodic (FDAP)
- Not effectively connected with a US trade or business



Withholding Rates and Reporting Requirements (1441/1442)

- Withholding rate of 30% on Gross Income
- Reduced treaty rate may apply
- File withholding tax return Forms 1042 and 1042-S



Withholding on Disposition of USRPI BY Foreign Persons – IRC 1445

- 10% withholding requirement on the amount realized
- 10% rate may be reduced (Form 8288-B).
- Withholding must be submitted to the IRS by the 20th day of the date of transfer (Form 8288 & 8288-A).
- Foreign seller/transferor must file Form 1040NR or 1120F.



US Real Property Holding Corporation

- FMV of its US real property interests is at least 50% of its USRPI plus FRPI plus business assets.
- Any interest in USRPHC is a USRPI
- 5% or greater foreign shareholder subject to FIRPTA
- USRPI carries a 5 year taint

Determining USRPHC Status

FMV OF ALL USRPI

_____ $\geq 50\%$

FMV USRPI + FMV OF FRPI + FMV BUS. ASSETS

If the answer is greater than or equal to 50%, the entity is a USRPHC.

Partnership Withholding – IRC 1446

- Partnership with income effectively connected (ECI) with a US trade or business, and
- ECI is allocable to a foreign partner
- Partnership must withhold at the highest rate for foreign partner

Required Partnership Reporting

- Withholding required to be submitted on Form 8813 on the 15th of the 4th 6th 9th and 12th month of the partnership's tax year.
- Form 8804 with Form(s) 8805 attached required to be filed on the 15th day of the 4th month following the end of the partnership taxable year.
- Partnership may consider certain partner-level deductions and losses in calculating the withholding tax.



Where to Get More Information

- Internal Revenue Code Sections 1441/1442, 1445, 1446 and related Treasury Regulations
- IRS Publications 515, 519 & 901
- Instructions for Forms mentioned
- <http://www.irs.gov/businesses/small/international/index.html>



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IRC Sections 1441-1446

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